IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11734 of 2006
with
SPECIAL CIVIL APPLICATION No. 12257 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KISHANKUMAR BALUBHAI GARSAR - Petitioner(s)
Versus
COLLECTOR, JAMNAGAR & 7 - Respondent(s)

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Appearance :
MR KETAN D SHAH for Petitioner(s) : 1,
MR.SUNIT SHAL, GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1, 8,
DS AFF.NOT FILED (N) for Respondent(s) : 2 - 7.
NOTICE NOT RECD BACK for Respondent(s) : 3 - 4.
NOTICE UNSERVED for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 13/10/2006

COMMON ORAL JUDGMENT

With the consent and at the request of the learned advocates, the matters are taken up for final disposal.

Rule. Mr.Sunit Shah, learned Government Pleader waives service of rule.

2. These two petitions are filed by the petitioners being aggrieved by the non action on the part of the respondent authorities, namely, the Mamlatdar, who did not grant Caste Certificate to the petitioners. In Special Civil Application (SCA) No.11734 of 2006 it is prayed that:

> "(A) A writ of mandamus or a writ in the nature of mandamus or any other writ, direction or order may kindly be issued by directing the respondent no.2 to issue caste certificate in the name of the petitioner on the basis of the documents produced by the petitioner along with the application."

Whereas, in SCA No.12257 of 2006, it is prayed that:

> “10(A) A writ of mandamus or a writ in the nature of mandamus or any other writ, direction or order may kindly be issued by directing the respondent no.2 to issue caste certificate in the name of the petitioner on the basis of the documents produced by the petitioner along with the application. Application dated 18-8-2005 and the document produced in appeal no.2/ 2006 as well as the documents produced in this petition.”

3. The question involved in these two petitions, namely, 'non-grant of caste certificate' by the Mamlatdar is similar to that of one involved in SCA SCA No.4593 of 1999, SCA No.5977 of 1999 and SCA No.3885 of 1999, filed before this Court.

The same were heard and disposed of by this Court (Coram: M.S. Shah, J.) by judgement and order dated 20.09.1999. In these petitions, the Court had to consider as to whether the petitioners are entitled to a caste certificate, in view of Government Resolution dated 29th February 1996, whereby the word, “ancestors' is substituted by word, 'parents'.

This Hon'ble Court referring to Part-IV (Gujarat) of the Presidential Order dated 29.10.1956 has observed as under:

> “10. The contention of Mr.Mehta is that the Presidential Notification does not limit the operation of this declaration to only the children of the rabaris who were residing on those forests and that when the Government has given the benefits to children of the rabaris who were residing in the nesses as on 29.10.1956, there is no reason to deny the benefit to the grand children of the rabaris who were residing in the nesses on 29.10.1956. While this contention of Mr.Mehta has some substance, at the same time it cannot be said that the Government can never draw a line as to when the persons may be deemed to have shifted their residence permanently. Whether the persons who were originally residing as rabaris in the aforesaid nesses on 29.10.1956 had permanently migrated or not

> can perhaps be decided with reference to the number of generations which are away from the nesses. It would be reasonable to presume that even if the rabaris might have migrated for earning living and therefore, might not be residing in the nesses after 29.10.1956, they might come back to the locality after their retirement and so also their children and the grand children may also come back. There is no reason for limiting the benefits of this declaration only to the second generation, i.e. the children. Of course, it cannot also the unlimited, but at the same time it appears that the benefit can be extended to two generations, i.e. Rabaris who were residing in the nesses on 29.10.1956 and to their children who might be away for the purpose of earning living and their grand children who may be away for the purpose of education."

After the aforesaid discussion, this Court allowed

all these petitions and directed the respondents to treat the petitioners as belonging to the Scheduled Tribe.

4. The respondents being aggrieved by the said direction filed Letters Patent Appeals in all the three petitions being Letters Patent Appeals No.1670 of 1999, 1671 of 1999 and 1672 of 1999, which were heard and decided by a Division Bench of this Court consisting of Hon'ble Mr.Justice M.R. Calla & Ravi R. Tripathi, JJ. The appeals were decided by judgement and order dated 31st August 2000. The Division Bench summarised the issue involved in the matter in para 6 of the judgement. The Division Bench recorded the reasons in the same para for the conclusions it reached. For ready perusal para 6 is reproduced hereinbelow”

> “6. The challenge to this decision made in the three Letters Patent Appeals on behalf of the State Government is that the Vigat Darshak Card by itself can not be taken to be conclusive proof so as to treat the holder of such a card to be a member of Scheduled Tribe and it cannot be said that the Mamlatdar had to issue a Caste Certificate on the basis of such Vigat Darshak Card. In fact we find

that one of the Mamlatdars has prescribed a proforma for making such applications, which contains about 17 columns and application is required to be made in the said Proforma. This Proforma is prescribed by the concerned Mamlatdar and it cannot be said that this rigid proforma is to be followed in each and every case. But before issuing Caste Certificate, it is always open for the concerned Mamlatdar to require the relevant answer and production of the relevant material so that the Committee may take appropriate decision based on such material. From the columns of this prescribed Proforma, the copy of which has been annexed at page 46 in the record of Letters Patent Appeal No.1672/99, as was annexed as Annexure 'D' in Special Civil Application No.3885/99 with the letter dated 18.5.99 by the Mamlatdar of Ranavav addressed to one Shri Sureshkumar Bhupatbhai Karmata, we find from the entries at Nos.10 and 11 therein that these entries require the production of Vigat Darshak Cards also. Thus, it is very clear that Vigat Darshak Card is certainly a material, which can be said to be relevant for the purpose of deciding the question of Caste Certificate by the Mamlatdar. It has to be agreed on all hands that in fact the job was entrusted by a Government Resolution to Mr.Malkan so as to take up the exercise of collecting the details about persons of the Rabari communities, who were residing in the Nesses of the Forests and on the basis of such a study, if the Tribal Development Department had issued the Vigat Darshak Cards and if made certain entries, which otherwise could not be readily available to persons, the same cannot be ignored

altogether and they must form a relevant material in the nature of guidelines to the concerned Committee and the Mamlatdar for the purpose of issuing the Caste Certificate, but we have no hesitation in holding that by no means such Vigat Darshak Cards can be said to be conclusive that holder of such a Card is a member of Scheduled Tribe. Of course the correctness of the entries made therein have to be accepted by the Mamlatdar to be correct unless the Mamlatdar has any other material to disbelieve such entries. After all this exercise at the Government level was undertaken only to ensure that the persons claiming eligibility for such Certificate have ready material with them in support of their claim and the materials such as Maswadi Receipts etc., which may not be readily available and, therefore, the details thereof may be reflected in such Vigat Darshak Cards with the available particulars. How a material in aid for the purpose of arriving at the decision as to whether the applicant concerned is to be treated as a member of the Scheduled Tribe or not should be taken as conclusive proof? In such cases, guidelines as were laid down by the Apex Court in the case of Kumari Madhuri Patil v. Addl. Commr., Tribal Development, reported in (1994) 6 SCC 241 have to be followed. We may also observe that in the case of Director of Tribal Welfare, Govt. of A.P. v. Laveti Giri, reported in (1995) 4 SCC 32 the Supreme Court has very clearly held that burden of proof of social status is always on the person who profess it to seek constitutional socio-economic advantages and it is no part of the duty of the State to disprove or

otherwise. In ordinary course there is no reason to doubt or disbelieve the correctness of those entries but in a given case even if taking such entries to be correct on their face value, it may be found that the holder of such Vigat Darshak Card is not entitled to the Certificate of being a Scheduled Tribe and in a given case if it is found that such entries have been wrongly reflected in the Vigat Darshak Card and the Mamlatdar has any reason or material to doubt the correctness of such entries, the burden lies upon him to confront the applicant with the reasons and material to disbelieve such entries and the Mamlatdar or the concerned Committee may certainly enter upon such an exercise and to that limited extent we are of the view that the conclusion arrived at by the learned single Judge deserves to be modified. In no case, the blanket direction, as had been issued by the learned single Judge, could be issued to treat the petitioners as belonging to Scheduled Tribe only on the basis of the Vigat Darshak Card. To that extent, we find that the Letters Patent Appeals filed by the State of Gujarat deserves to be allowed and we direct that in case the Vigat Darshak Card is produced before the concerned Committee and the Mamlatdar, they may proceed to decide the Applications of the candidates claiming to be treated as members of Scheduled Tribe and in taking up such exercise, they may consider such Vigat Darshak Cards as a relevant material and the entries made therein to be correct unless there is any ground or material to disbelieve the same and find those entries to be wrong or false and each case has to be decided on its

> own facts and the applicant will be under an obligation to furnish the necessary materials, as may be required, besides the Vigat Darshak Card itself. The order passed by the learned single Judge is, therefore, set aside and these three Appeals are allowed, as above, with no order as to costs."

Finally, the Division Bench directed that:

> ".. .. The rights of all the parties shall be determined accordingly for the purpose of their claim to be treated as members of Scheduled Tribe."

5. The Division Bench while vacating the interim orders passed in the matters observed that,

> ".. .. the respondents may consider the case of each of these petitioners, whether they are members of Scheduled tribe or not accordingly in the light of what has been held in this order. .. .."

6. Once again the very same issue came up for consideration before this Court in SCA No.6983 of

2002, wherein this Court (Coram: Jayant Patel, J.) relying upon the aforesaid Division Bench judgement observed as under:

> “7. In view of the aforesaid observations, it is clear that there must be cogent material with the Mamalatdar to disbelieve the entries reflected in the Vigat Darshak Card and in any case the said aspect for such purpose is required to be informed to the concerned applicant by the authority and thereafter the decision should be rendered. A perusal of the impugned order shows that no reasons whatsoever have been recorded for discarding the evidence of Vigat Darshak Card and even in the affidavit in reply the said aspect is not reflected and the whole burden is thrown upon the applicant as if the applicant had to prove the material for the purpose of discarding or not relying on the Vigat Darshak Card. In my view, such approach on the part of the authorities is running contrary to the observations of the Division Bench in the above referred Letters Patent Appeal No.1670/99 and in my view the authority should be directed to decide the issue on the question of issuance of certificate keeping in view the observations made by the Division Bench referred to hereinabove and also the material which may be available for discarding the entries in the Vigat Darshak Card.”

The Hon'ble Court directed the respondent authorities, 'to treat the matter afresh keeping in view the above referred observations of the Division Bench in the above LPA No.1690 of 1999 and the observations made in this judgement.'

7. In the present petitions what is complained is that despite the clear cut directions/ observations of the Division Bench and that of the learned Single Judge, as referred to hereinabove the authorities did not consider the application of the petitioners in time and on untenable ground rejected the application of the petitioners.

Learned advocate Mr.Ketan Shah for the petitioners invited attention of this Court to order dated 07.06.2006. The first ground set out in this order for non granting of certificate is that, 'place of permanent residence, shown by the applicant, i.e. Bhadanes, Taluka Jam Jodhpur in Allech area is not included in 'forest area'. That being so, as per the Presidential Notification dated 29.10.1956, the persons belonging to 'rabari' community residing in the 'ness' area of the forest of 'Allech' only are recognised as Scheduled Tribe.'

8. The matter was heard at length. On behalf of the respondent affidavit and further affidavits are filed, to which affidavit in rejoinder is filed.

Learned Government Pleader Mr.Sunit S. Shah

submitted that the Government is not averse to granting of the certificate to the petitioners belonging to Scheduled Tribe. But then, he submitted that the entire issue is complicated. He submitted that taking into consideration the Presidential Notification dated 29.10.1956, Item No.24 in Part-IV, Gujarat, which is to the effect that, “Rabaris in the nesses of 'Barda' and 'Gir”, before issuing caste certificate the authorities have asked for details of the 'nesses' situated in the 'Allech' area of forest from the Forest Department. He submitted that they replied that, 'Barda' ness comes within the revenue boundaries of Village 'Vadavala”. He further submitted that in the affidavit filed by one Shri M.G. Patel, Deputy Conservator of Forest, Jamnagar Division, the relevant details are set out stating that, 'as to when and how this 'Allech' area-forming part of Jamjodhpur Taluka, was declared to be a reserved forest. For ready perusal the relevant part of the affidavit is reproduced.

> “At the outset it is stated that to declare the area of 11 villages in Jamjodhpur Taluka

as a reserved forest, a notification under section 4 of the Indian Forest Act was issued in the month of May 1959. The Notification was issued whereby Government of Bombay state had proposed to declare 27 survey number of 11 villages of Jamjodhpur Taluka of Halar District to constitute land as reserved forest. Further Assistant or Deputy Collector, In-charge of Jamjodhpur Taluka was appointed under clause C of the section 4(1) as a Forest Settlement Officer to enquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over land, also, the Collector Halar was appointed as a Appellate Authority to hear appeals from any orders passed by the said Forest Settlement Officer. The said notification under section 4 is annexed herewith and marked at Annexure R-1.

The Forest Settlement Officer thereafter, carried out Settlement Procedure in respect

of all above mentioned survey numbers and reported to the Chief Conservator of Forest. The Government had in turn declared the areas proposed by the Forest Settlement Officer as reserved forest. Survey number and village wise extract on report of Forest Settlement Officer showing the area proposed to be declared under section 20 as reserved forest and area proposed to be deleted from the notification under section 4 in the tabular form is annexed herewith and marked at Annexure R-II.

Copy of the Taluka map of Jamjodhpur showing various villages and geographic area which is otherwise also known as 'Allech' area outlined with red colour is annexed hereto and marked at ANNEXURE R-III. Further, a village map of village Vadavala, Taluka Jamjodhpur showing the Government waste land Survey No.34 [34(1), 34(2)] and location of 'Bhadanesh' (red colour) is submitted herewith and marked at ANNEXURE R-IV to

this reply.”

Mr.Sunit S. Shah, learned Government Pleader submitted that in view of the aforesaid facts, the officers bona fide believed that once there is no 'ness' area included in the forest of 'Allech', with human population, no certificate can be issued declaring a person a member of Scheduled Tribe.

9. Mr.Ketan Shah, learned advocate pointed out that what is referred to by the Deputy Conservator of Forest is a notification under section 4 of the Indian Forest Act. That was issued in the month of May 1959. Prior to that there was no 'reserved forest', but only because there was no 'reserved forest' it cannot be construed to mean that there was no forest. Therefore, while interpreting the entry in the Presidential Notification which says that 'Rabari' in the ness of forest of 'Allech', 'Bharda' and 'Gir' is to be construed to mean that persons who were residing in the nesses which were situated in the forest of 'Allech' are entitled to get caste certificate under the said entry of the Presidential

Notification. This forest of Allech was later on declared to be reserved forest.

Besides a person residing in a 'ness' is dependent on the 'forest' for all his requirements. He grazes his cattle in the forest which is the only source of his livelihood, and instead of staying in the thick forest, he stays/ resides on the periphery of the forest. For all practical purposes that area is a forest area, more particularly for the purpose of entry in the Presidential Notification. Therefore, merely because the Forest Department has certified that there are no 'nesses' in the forest of area of 'Allech' with human population cannot be made the basis for denying caste certificate. The 'object' behind the entry which provides that a community (Rabari) residing in the 'ness' area (which must include the periphery areas also) of 'Allech' forest be considered eligible for issuance of certificate, is that they are given certain benefits as they are deprived of the benefits flowing from urbanisation like easy access to education, social and economic development, etc. They being in the close vicinity

of the forest and being dependent on the forest, was the main factor, which must have weighed with the legislators for including them in the Presidential Notification. That being so, the certificate could not have been denied on the basis of the reply filed by the Forest Department.

10. In view of the above discussion and the directions issued by the Division Bench, there is no scope for issuance of fresh directions. Directions already issued by the Division Bench are not to be re-written or reiterated.

As directed by the Division Bench the officers are supposed to take into consideration the documents produced by the applicant for issuance of caste certificate. As is mentioned by the Division Bench 'Vigat Darshak Card' is one such material, which has to be taken into consideration and it cannot be discarded for no valid reasons.

The Division Bench has in terms observed that,

> “In ordinary course there is no reason to doubt or disbelieve the correctness of those entries but in a given case even if taking such entries to be correct on their face value, it may be found that the holder of such Vigat Darshak Card is not entitled to the Certificate of being a Scheduled Tribe and in a given case if it is found that such entries have been wrongly reflected in the Vigat Darshak Card and the Mamlatdar has any reason or material to doubt the correctness of such entries, the burden lies upon him to confront the applicant with the reasons and material to disbelieve such entries .. ..”

11. In the present case, as is reflected from the order impugned and the contents of the petition memo, the Mamlatdar has failed to discharge the duty which he is duty bound to discharge under the decision of the Division Bench.

In the result these petitions are allowed. The order impugned is quashed and set aside. The Mamlatdar is directed to consider the case of the petitioners strictly in accordance with the guidelines issued by the Division Bench and discharge his duty in

accordance with law, without being guided by any extraneous considerations. It will not be inappropriate to reiterate that the Division Bench has said that "the Mamlatdar has any reason or material to doubt the correctness of such entries, the burden lies upon him to confront the applicant with the reasons and material to disbelieve such entries .. " (emphasis supplied)

12. In view of this particular observation of the Division Bench it will be the duty of the Mamlatdar to consider the application/s made for issuance of caste certificate and in case it is found fit, it is the duty to issue caste certificate within the time prescribed for the same. Rule is made absolute with no order as to costs.

(RAVI R. TRIPATHI, J.)

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